IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

MFA.No. 293 of 2001(B)

OP(MV).376/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM.

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APPELLANT: PETITIONER IN THE OP. (MV) NO.376/1998.

VALSALA, W/O. KESAVADAS, ACHATH HOUSE, MUNDAMUKA AMSOM, NEDUNGOTTUR DESOM, OTTAPALAM TALUK, SHORANUR P.O., PALAKKAD DISTRICT (DIED).

ADDL. APPELLANTS 2 TO 5 ARE IMPLEADED.

2. DAKSHAYANI AMMA, W/O,. ACHUTHAN NAIR, RESIDING AT ACHATH HOUSE, NEDUNGOTTUR, SHORNUR, OTTAPALAM ATALUK, PALAKKAD DISTRICT.

3. KESAVADA DASAN, S/O. KESAVAN NAIR, DO. DO.

4. SANTHOSH, S/O. KESAVADASAN, DO. DO.

5. VINEETH AGED 15 YEARS, (MINOR) DO. DO.

(MINOR ADDL. 5TH APPELLANT REPRESENTED BY HIS FATHER KESAVADASAN (ADDL. 3RD APPELLANT) AS GUARDIAN.)

ADDL. APPELLANT 2 TO 5 ARE IMPLEADED AS PER ORDER DT.13.10.05 IN IA. 3014/2005.

BY ADV. SRI.P.G.PARAMESWARA PANICKER
SRI.SANTHEEP ANKARATH

M.F.A. NO.293/2001

RESPONDENTS: RESPONDENTS IN OP. (MV) NO.376/98.
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1. **PAZHANIMALA, AGED 30 YEARS, S/O.RAKKAN, POTTOMKUZHI HOUSE, ETHUVAMPADAM, VADAKKUMCHERRI, PALAKKAD DISTRICT. (DRIVER OF BUS KLSB-4201, MDL, 14390/97 TO 19.8.2000, BADGE NUMBER 1236/98.).**

2. **MR.M.R.BABU AGE AND FATHER'S NAME NOT KNOWN, MALAYATH HOUSE, KOORKENCHERY P.O. (OWNER OF KL 8 B- 4201 BUS, PERIOD OF VALIDILITY OF PERMIT 5.8.02 PT. NUMBER C6/38/92).**

3. **UNITED INDIA INSURANCE CO. LTD. KURUPPAM ROAD, THRISSUR, (INSURER OF KL 8 B-4201 BUS POLICY NUMBER 100606/31/040/11/007/30860/97).**

4. **SRI.VIJAYAKUMAR, FATHERS NAME NOT KNOWN, VALIYA PARAMBIL, KALLIPADAM, SHORANUR, (DRIVER OF KL-9/1551 BUS).**

5. **MANAGING PARTNERS MAYILVAHANAM TRAVELS, SHORANUR, (OWNER OF KL-9/1551 BUS.).**

6. **UNITED INDIA INSURANCE CO. LTD. OTTAPALAM, 679 101 (INSURER OF KL-9/1551/BUS.)**

BY ADV. SRI.P.MURALEEDHARAN - R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 11/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.293 OF 2001

Dated 11th December, 2007

JUDGMENT

Koshy,J.

A 35 year old woman sustained fatal injuries in a motor accident while she was travelling in a bus driven by the first respondent when another bus driven by the fourth respondent came from the opposite direction hit the same. The buses driven by the first and fourth respondents were insured by the third and sixth respondents respectively. Both buses were insured by the same insurance company. Tribunal found that the first respondent driver was negligent and third respondent insurance company was directed to deposit the amount of compensation awarded. Against a claim of compensation of Rs.5,50,000/=, only an amount of Rs.3,25,343/= was awarded by the Tribunal. It is submitted that out of this amount more than Rs.1,00,000/= was reimbursement of medical expenses. She was in the hospital as inpatient for 125 days. She had undergone five surgeries. The Tribunal has considered the injuries in paragraph 15 as follows

> "Immedialy after accident petitioner was taken to Sanjeevani Hospital, Kulappully from where she was referred to West Fort Hospital, Thrissur. The injuries noted are lacerated would left side of face, lacerated wound (R) leg and lacerated wound left leg. X-ray

> investigation revealed compound dislocation of right ankle, compound fracture of left leg both tibia and fibula, compound comminuted fracture right leg both tibia and fibula.
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> 16. Ext.A6 series are the discharge summaries issued from West Fort Hospital, Thrissur. Initially she remained hospitalised from 11.11.97 to 15.12.97 for a period of 34 days during which period she underwent wound debridement and application of external fixator to right leg as well as to left leg and skin grafting. Thereafter, she got readmitted on 10.1.98 and remained hospitalised till 3.2.98 during which period both bone grafting was done for bilateral compound fracture injuries. She remained on external fixator. The next admission was from 24.3.98 to 31.3.98 during which period realignment of external fixators were done and external fixators were removed after applying PTB cast for both legs.
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> 17. Subsequently she was readmitted on 1.7.98 and remained hospitalised till 11.7.98 during which period closed interlocking nailing was done to right leg and POP to left leg. Subsequently, she was again admitted on 18.11.98 and remained hospitalised till 9.12.98 during which period interlocking nailing was applied on left leg. Finally she was readmitted on 7.5.2000 and remained hospitalised till 19.5.200 during which period interlocking nailing were removed and treated by antibiotics for curing infection. Thus, petitioner underwent hospitalisation for a total period of 110 days at West Fort Hospital during which period she underwent about five surgeries."

Ext.A11 is the disability certificate. It is stated that on account of the injuries the claimant had suffered 50% temporary disability during the first six months, 35% in the next six months and permanent disability of 25%. She died in 2005. Death was after eight years of the accident. After the death, her husband, mother and two children were impleaded as legal representatives. They have got a case that

the death is related to the accident. It is also contended that the compensation awarded was very low. She was an agent of R.D. of the Postal Department. At the time of death Rs.2,500/= was her monthly income. That was taken by the Tribunal. But, according to the claimants, compensation for injuries were not calculated correctly. If the amount was calculated on a multiplier method, the amount would have been higher. It is further contended that even though 25% disability was certified, she was unable to continue her work after the accident. Total expenses for the treatment of the accidental injuries come to more than Rs.3,00,000/=. In respect of renal failure which finally caused death a certificate issued by the doctor was shown to us stating that it may have connection with the accidental injuries. But, that certificate has to be proved by adducing evidence. Medical evidence is necessary. In these circumstances, we remand the matter to the Tribunal. Both parties are allowed to adduce further evidence regarding the quantum of compensation. The findings regarding the negligence, coverage of insurance etc. are not disturbed. Parties shall appear before the Tribunal on 4.2.2008.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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